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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Application of Ameritech Michigan	)	
Pursuant to Section 271 of the	)	**CC Docket No. 97-137**
Communications Act of 1934,	)	
as amended, to Provide In-Region,	)	
InterLATA Services in Michigan.	)	

REPLY COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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REPLY COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc., on behalf of its Michigan operating affiliate, TCG Detroit (hereinafter collectively "TCG"), hereby submits its Reply Comments on the Application of Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan ("Ameritech").[1]

I. INTRODUCTION AND SUMMARY

The United States Department of Justice ("DOJ") has performed a detailed evaluation of Ameritech's compliance with Section 271 of the Communications Act and has concluded that the application should be denied.[2] The Commission is required to give the DOJ's evaluation "substantial weight" in rendering its

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[1]Because of the huge volume of comments filed by other parties, TCG will only respond to selected arguments. Silence by TCG regarding the arguments of other parties does not constitute acquiescence.

[2]Evaluation of the United States Department of Justice, June 25, 1997. ("DOJ Evaluation")

decision.[3]

Although finding that Ameritech has made "significant and important progress" toward meeting the preconditions for in-region interLATA entry under §271 in Michigan, the DOJ has concluded that Ameritech still "has not yet complied with several of the requirements of the competitive checklist." In particular, it notes:

> Unbundled switching and unbundled transport are not available in a manner consistent with the 1996 Act and the Commission's regulations, and as a result, local competitors cannot freely combine network elements into a "network platform" and receive access charges in connection with their provision of local service.
>
> Ameritech's wholesale support processes, including OSS, have not been shown to be adequate to handle reliably the ordering and provisioning of significant quantities of demand for resold services and unbundled elements by local competitors . . . .
>
> Ameritech also has not provided trunking facilities of acceptable quality to ensure nondiscriminatory interconnection.[4]

In finding that Ameritech's Application should be denied because it has not yet met several of the competitive checklist items, the DOJ observes that Ameritech's entry into the interLATA marketplace would be inconsistent with the Act's objective of insuring that local markets are "fully and irreversibly open to

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[3]Sec. 271(c)(1).

[4]DOJ Evaluation at iv.

competition."[5] The DOJ concludes that "local exchange competition in Michigan is still on a very small scale, and the areas in which Ameritech has not fully complied with the competitive checklist constitute tangible obstacles to the growth of local competition."[6] TCG agrees fully with the DOJ's evaluation and conclusions, and urges the Commission to reject Ameritech's application.

II. STATE AUTHORITIES IN MICHIGAN RECOGNIZE THAT AMERITECH HAS NOT SATISFIED THE COMPETITIVE CHECKLIST

In its original comments, TCG set forth the legal standards which must be met in order for Ameritech to qualify to provide in-region interLATA services in Michigan.[7] TCG reviewed the Congress' Conference Committee Report rejecting any suggestion that a promise to meet the standards at some future point would be sufficient in lieu of actually demonstrating that the BOC is currently providing the required access and interconnection. Thus, actual performance, not paper promises, is what is required by the legal standard. This is particularly relevant in examining the comments of the Michigan Public Service Commission ("MPSC").

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[5]Id. at v.

[6]Id. at v.

[7]See TCG Comments, June 10, 1997, p 2.

A. The MPSC's Consultation Demonstrates The Legal Standard Has Not Been Met And The Application Is Premature.

A review of recent history is in order to properly place the MPSC's consultation in its proper context. On January 2, 1997, Ameritech filed its first application with the Commission to provide in-region interLATA services in Michigan. Simultaneously on January 2, 1997, Michigan's Governor John Engler sent a letter to FCC Chairman Reed Hundt expressing his "support of Ameritech's filing." The Governor further indicated "we want competition in our telecommunications marketplace and are ready for it. Competition has and will continue to emerge on all fronts in Michigan with your approval of this application." Copies of the Governor's letter were sent to the MPSC before it could begin its evaluation of the application.

On February 5, by a two to one vote, the MPSC authorized the filing of its consultation with the Commission indicating, according to its news release, that "it appears that Ameritech Michigan meets the technical requirements of the Act." The MPSC conducted no evidentiary hearings on the application's claims, but had held open a docket number in which interested parties could file information they deemed relevant.[8] After the MPSC's apparent "sign off," on February 7, 1997, the Commission issued its Order granting the Motion to Strike filed by the

[8]See MPSC Case No. U-11104.

Association for Local Telecommunications Services and ordered Ameritech to indicate by February 11, 1997, whether it intended to continue to prosecute its application or whether it intended to withdraw its pending application. Ameritech, in a letter dated February 11, 1997, indicated that it intended to withdraw, and the FCC dismissed its application without prejudice.[9]

On May 21, 1997, Ameritech filed with the Commission its Second Application to provide in-region interLATA services in Michigan, which is the subject of this proceeding. Again, as with the initial application, Governor John Engler wrote to Commission Chairman Reed Hundt to support Ameritech's filing. Specifically, Governor Engler stated: "I feel compelled to express my support of Ameritech's filing." This letter indicates "the Michigan Public Service Commission has conducted an extensive analysis of the filing, and found that Ameritech has met most of the items in the competitive checklist. Where there appears to be a deficiency, the MPSC has indicated that it is reasonable to anticipate that the necessary corrections can be made prior to the date on which the FCC must act on the application."[10] (Emphasis supplied.) Thus, the Governor's second letter of support acknowledges that Ameritech does not meet the checklist.

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[9]Order in CC Docket No. 97-1, February 12, 1997.

[10]See letter of Governor John Engler to FCC Chairman Reed Hundt, June 10, 1997, p 1.

The MPSC has had a similar change in its position in its §271(d)(2)(B), June 10, 1997 Consultation on the application. Shortly after the Commission's February 12, 1997 dismissal of Ameritech's first application, the MPSC had a formal request for evidentiary hearings on Ameritech's compliance. The MPSC denied a motion to open contested case hearings on numerous checklist items in its own MPSC Case No. U-11104.[11] Thus, the "extensive analysis" referred to in the Governor's letter did not include evidentiary hearings. The MPSC did have a single informal hearing on a single checklist item, Operations Support Services ("OSS"), and not surprisingly, found Ameritech to be non-compliant. The MPSC concluded overall that Ameritech met only 11 of the 14 competitive checklist items, but indicated "we believe that improvements in the three areas we have noted can be accomplished in the remaining 70 days prior to FCC action on Ameritech Michigan's Application."

The MPSC's review of Ameritech's first application was performed after an explicit expression of support by the Governor, without benefit of an evidentiary record created through testimony and cross-examination. The MPSC concluded that Ameritech "appears" to have met all the technical requirements of the Act. The MPSC's review of Ameritech's second application occurs simultaneously with

[11]See Re Ameritech's Compliance, MPSC Case No. U-11104, Opinion and Order, issued April 24, 1997, p 3, denying the March 13, 1997 Motion of Brooks Fiber seeking evidentiary hearings on Ameritech's compliance with the competitive checklist.

the expression of political support. The MPSC held one hearing on one subject (i.e., OSS), and concluded that 3 of the 14 item competitive checklist, which it earlier found to have been met, are not currently satisfied.

The inescapable conclusion is that even among those who are obviously favorably predisposed to supporting Ameritech's application, no one can conclude in good conscience that Ameritech has complied with the competitive checklist. If clear supporters cannot find compliance, it is hardly surprising that other parties like the DOJ and competitors like TCG also cannot find that Ameritech has complied with the Section 271 checklist.

B. The Attorney General Of The State Of Michigan Concludes Ameritech Has Not Complied With Section 271.

Attorney General Frank J. Kelley of Michigan has statutory responsibilities with respect to the protection of the public interest of the people of the State of Michigan. Mr. Kelley has observed that:

> The FCC must also consider the extent to which it can rely upon the consultation provided by the Michigan Public Service Commission (MPSC) in this proceeding. If the MPSC has fallen short in its review of Ameritech's compliance with the competitive checklist set forth in §271(c)(2)(B) of the Act, it is incumbent upon the FCC to say so. Otherwise, the FCC runs the risk of undermining the efforts of public utility commissions (PUCs) in other states that, often with the participation of the State's Attorney General's Office, have undertaken thorough reviews of their local BOCs compliance with the

requirements of §271 of the Act.[12]

Michigan's Attorney General then concludes regarding Ameritech's compliance with §271 of the Act as follows:

> Ameritech Michigan has neither fully implemented the requirements of the 14 point checklist nor has it demonstrated that granting it approval to enter into the interLATA service market is consistent with the public interest, convenience, and necessity. In addition, in light of the absence of any meaningful competition at the local level of Michigan telecommunications market, I believe that Ameritech Michigan's Application to Provide In-Region InterLATA Services in Michigan is premature. Accordingly, Ameritech Michigan's Application should be denied.[13]

III. AMERITECH FAILS TO PROVIDE COMPETITORS WITH PERFORMANCE PARITY IN INTERCONNECTION, UNBUNDLED ELEMENTS, AND OSS

The DOJ correctly concludes that Ameritech has to provide competitors with performance measures covering OSS. According to the DOJ, " Ameritech's lack of fully adequate performance measures and enforceable performance benchmarks suggests that the development of local competition in Michigan has not yet been shown to be irreversible."[14]

It is TCG's position, however, that performance measurements of OSS, as

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[12]Attorney General Frank J. Kelley's comments, June 9, 1997, p 9-10.

[13]Id.

[14]DOJ Evaluation at v; see also 38-40.

well as of other services obtained from Ameritech, are also necessary to determine whether Ameritech provides interconnection to competitors consistent with the Act. The very first item on the competitive checklist (§ 271(c)(2)(B)) requires Ameritech to demonstrate that it provides its competitors with the same quality of interconnection that it provides to itself and its affiliates. The statute accomplishes this result by reference to Section 251(c)(2)(C) which requires all ILECs, including Ameritech, to provide to competitors interconnection that is "at least equal in quality" to that provided to itself, subsidiaries and affiliates, or any other party to which the carrier provides interconnection. Ameritech therefore has to provide CLECs with performance parity.

The Commission's rules are consistent with TCG's position regarding performance parity. The Commission already has concluded that pre-ordering, ordering, provisioning, maintenance and repair, and billing functions must be provided to CLECs on a schedule comparable to that which the ILEC provides itself.[15] The practical impact of a lack of parity upon CLECs is undeniable, for the absence of a fully functioning OSS leads to a loss of control in effectively servicing their customers.

Indeed, as briefly noted above, the performance parity concerns raised by the DOJ are not limited to OSS, however, but extend to every interconnection and

[15]See 47 C.F.R. § 51.319(f)(2).

interaction between an ILEC and competitors. As the DOJ correctly notes, there are important gaps in the measures proposed by Ameritech -- " namely, (1) a lack of sufficient clarity in certain of the definitions presented, and (2) a failure to measure and report actual installation intervals for resale, installation intervals for unbundled loops, comparative performance information for unbundled elements, and repeat reports for the maintenance and repair of unbundled elements."[16]

The record here demonstrates that while facilities-based and resale CLECs have the same goals for a fully functioning OSS, specific requirements for each type of carrier may differ. Facilities-based CLECs have needs that are distinct from resale CLECs because facilities-based CLECs need to integrate their networks with those of the ILEC. This results in a need to coordinate fully the two networks to provide seamless services. The reseller, in comparison, is relying solely on the underlying ILEC's facilities, and therefore, no coordination of two separately owned, separately operated networks is necessary. Unless this distinction is acknowledged and considered, Congress' expressed goal to encourage facilities-based competition will not be realized.[17]

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[16]DOJ Evaluation at 40.

[17]Section 271 of the Communications Act makes the existence of a facilities-based competitor an essential prerequisite for entry by a Bell Operating Company ("BOC") into in-region long distance in cases where the BOC has received a request for interconnection. See 47 U.S.C. § 271(c)(1)(A).

A. Ameritech Fails To Provide Interconnection Equal In Quality To That Provided To Itself By Blocking A Disproportionate Share Of Competitors' Traffic.

Section 251(c)(3) of the Act requires that incumbent local exchange carriers ("ILECs") like Ameritech provide competitive local exchange carriers ("CLECs") with "**nondiscriminatory** access to unbundled elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and **nondiscriminatory.**"[18] As the DOJ correctly recognized in its Evaluation of SBC's interLATA application in Oklahoma, "'nondiscriminatory access' to unbundled elements [requires] . . . **a comparison between the access afforded to different CLECs.**" (emphasis supplied).[19]

In the absence of comparisons between CLECs, an ILEC like Ameritech could argue that the competitive checklist can be satisfied by the existence of a single harmless competitor, like a pure reseller of Ameritech's own services, while actively frustrating entry for more meaningful facilities-based competitors.[20] The

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[18]47 U.S.C. §251(c)(3) (1996). (Emphasis supplied.)

[19]In the Matter of the Application of SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, Evaluation of the United States Department of Justice, FCC Docket No. 97-121 at footnote 38 (Emphasis supplied)("Oklahoma DOJ Evaluation").

[20]In reality, a pure reseller of an ILEC's services is nothing more than a sales agent of an ILEC. The ILEC effectively controls the reseller's prices, reliability, and service characteristics. Only a predominantly facilities-based competitor can exert competitive discipline on the ILEC and provide consumers with real choices.

failure to apply the nondiscriminatory access requirement between CLECs would allow absurd results such as deeming Ameritech to have met the competitive checklist through the existence of a CLEC (even its own affiliate) serving only a small market segment, while failing to meet the competitive checklist items for unaffiliated CLECs posing substantially more competitive risk, such as facilities-based carriers attempting to address larger or more diverse market segments.

Indeed, the DOJ's Evaluation of the instant application goes one step further than its Oklahoma Evaluation. The DOJ points out that where the ILEC relies upon the most favored nation ("MFN") clauses in interconnection agreements to meet the Section 271 checklist, "and there has been substantial doubt as to what its MFN clauses actually permit," the Commission should "carefully scrutinize the BOC's interpretations to ensure both that they are adequate and that they remain fully enforceable after entry authority is granted."[21] The DOJ cites TCG's problems with obtaining adequate enforcement of the MFN clause in its interconnection agreement with Ameritech in support of this argument.[22] Clearly, unless the MFN process works adequately, Ameritech is not treating it competitors in a nondiscriminatory fashion.

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[21]DOJ Evaluation at 7.

[22]DOJ Evaluation at 8, fn 12.

Another illustration of Ameritech's failure to provide performance parity with respect to interconnection with competitors are the severe blocking problems discussed in the comments of DOJ and Brooks Fiber.[23] As cited by the DOJ, Ameritech's own data proves that competitors' traffic is blocked on Ameritech's network far more than Ameritech's own traffic.[24]

The DOJ states that it "agrees that End Office Integration (EOI) trunk blocking rates could potentially be reduced with improved traffic forecasts," and urges CLECs to provide such data to the fullest extent possible.[25] EOI trunking are the trunk groups established between Ameritech's tandems and a CLEC's switch. TCG has established trunk groups to deliver traffic to Ameritech's tandem, and similarly, Ameritech has established trunk groups to deliver traffic to TCG's switch. TCG agrees that forecasting would help to alleviate blocking in EOI trunk groups by allowing the timely increase in EOI trunk capacity with the growth of CLEC customer bases. But forecasting is pointless if the recipient of the forecast is not prepared to act swiftly

However, the persistent blocking problems of TCG traffic occurring in Ameritech's network is unaffected by EOI trunking. The blocking of TCG traffic is occurring behind Ameritech's tandem in Ameritech's network before the traffic

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[23]The trunk blocking problem is also discussed in TCG's Comments at 4-9.

[24]DOJ Evaluation at 25.

[25]DOJ Evaluation at 27.

reaches EOI trunk groups. Traffic to TCG customers is being blocked in Ameritech's network because of Ameritech's failure to implement alternative routing of TCG NXXs.

TCG's complaint is distinct from the complaint of Brooks Fiber, which is that "Ameritech has not been adequately monitoring its trunks to Brooks Fiber, and the resulting network blockage prevented calls to a Brooks customer from being completed.[26] Brooks adds that Ameritech implemented additional EOI trunks to alleviate the network blockage, although they were improperly installed.[27] In contrast, the installation of additional trunking would do nothing to alleviate the network blockage TCG is experiencing.

TCG has proposed at least two solutions to the problem of the lack of alternative routing for TCG's NXXs. First, TCG suggested a routing plan in which calls from Ameritech's customers to TCG's customers are routed to more than one Ameritech tandem in the event of blocking. Second, TCG proposed that alternative trunking be established directly from Ameritech's end offices to TCG's switch, to bypass points of blockage in Ameritech's network. Neither of TCG's proposals has been implemented by Ameritech, and TCG continues to experience blocking of traffic destined for TCG's network.

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[26]Opposition of Brooks Fiber at 29.

[27]Id.

Ameritech's network blockage problems experienced by TCG and Brooks Fiber show that the Commission cannot prematurely grant the instant application. Otherwise, as correctly noted by the DOJ, Ameritech would then have "little or no incentive to adequately provision interconnection trunks to CLECs."[28]

In sum, two different blocking problems still experienced by TCG and Brooks Fiber both support the conclusion that Ameritech is providing inferior interconnection to competitors compared to the interconnection it provides to itself. Therefore, Ameritech clearly has failed to satisfy the 271(c)(2)(B)(i) competitive checklist.

B. Ameritech Fails To Provide Interconnection Equal In Quality To That Provided To Itself By Failing To Establish Fully Functional OSS.

As TCG discussed in its initial comments, it has experienced discriminatory delays in fulfilling customer requests because it must depend upon coordination with an ILEC that presumably should be handled entirely through OSS interfaces. TCG is using electronic interfaces only for the processing of orders.[29] However, TCG has been informed that for the channels it orders it must use an 800 number to report service troubles for maintenance and repair services. Thus, instead of instantaneous responses that OSS would provide through an electronic interface,

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[28]DOJ Evaluation at 35.

[29]Comments of TCG at 12.

TCG experiences delays in response times up to a half an hour per call. By contrast, Ameritech does not report troubles to itself through an 800 number and does not experience half hour response times.

In practical terms, ILECs may benefit from mere unresponsiveness to these and other complaints. If CLECs experience difficulty responding to customer requests, its ability to establish a solid reputation in the competitive marketplace is impeded. Clearly, customers cannot be expected to distinguish between delays that are under their provider's control and those delays that their provider cannot control. Any customer simply and appropriately wants responsive, reliable, and high-quality service. The ability to provide a high-level of service is crucial to the ability of CLECs to compete. Enforcement of the parity principle is therefore essential for CLECs to have a reasonable opportunity to compete with the ILECs for customers on an equal basis, and that is why the Communications Act demands such parity.

Functional OSS interfaces are absolutely vital to the long-term seamless interoperability of two or more interconnected networks and to the ability of the CLECs to compete. This is the case regardless of whether a facilities-based CLEC is using its own facilities entirely or is providing service to its customers using a combination of its network and the ILEC network. In the latter case, only a fully functioning OSS will permit the CLEC and the ILEC to coordinate provisioning, billing, repair, and maintenance.

Without such network-to-network coordination, reliable service to a CLEC's customer is at risk. For example, a facilities-based CLEC that monitors its network on a 24 hour-a-day basis cannot effect such monitoring functions if it cannot obtain the capability that the ILEC has for monitoring the ILEC network, which would occur through the pre-ordering OSS function. Similarly, facilities-based CLECs depend on placement and execution of firm order commitments (FOC) to provide a customer with service, and must have real-time access to information about the execution of the FOC. The same real-time information would enable a facilities-based CLEC to actually re-route services carried over its own facilities, based on knowing which facilities the ILEC is using and when the ILEC can provision unbundled network elements.

The automated systems of the ILEC create the objective databases needed to compare performance. When such systems are fully operational to provide wholesale support to CLECs, performance measures can be a system by-product. But it must be clear that data from such OSS systems are a means of achieving parity, not the end in itself. It is the outcome of performance parity that is required by law and important to competition, not the means by which the results are obtained. Actually, an ILEC may choose to assemble its performance measures manually or electronically; but either way, it must provide parity. If it chooses to serve itself electronically and competitors manually, the result of the manual performance must be "at least equal" to the electronic performance. Thus, in

providing OSS functions, Ameritech must show that it has actually provided performance parity.

The question of whether an ILEC has satisfied the parity standard demands a simple "yes" or "no" answer -- it has either clearly met its obligation or it has not. There is no gray area, no "close enough." This standard is simple and should result in swift justice. To determine the answer, CLECs and regulators must be able to see quantitative data or performance measures. A comparison of the performance the ILEC provides to itself with its performance relative to each CLEC with which it interconnects should quickly, simply, and swiftly reveal whether the parity principle has been met. Examples of the parity principle in action are readily at hand -- e.g., installation intervals for unbundled loops, blocking on interconnection trunks.

The burden of developing the appropriate quantitative measures assuring "apples-to-apples" comparison rests with the ILEC, not the CLEC or regulators. The ILEC must not be permitted to escape its statutory duty based on its assertion that it does not perform a particular function for itself at all, and thus no comparative performance data is available. Rather, for these limited cases (if any), the ILEC must create internal performance benchmarks that approximate the benchmarks for the function the CLEc needs, and permits a direct "apples-to-apples" comparison. If it cannot do so, it is in violation of the Act.

TCG's position is supported by the DOJ. The DOJ recognizes that meaningful access to resale services, unbundled elements, and other items required in Section 251 and the checklist of Section 271 "are of critical importance in opening local markets to competition.[30] The DOJ makes a similar argument that "successful commercial operation is by far the most persuasive evidence that these wholesale support processes provide needed functionality and will operate at forecasted volume levels."[31] In addition, as recognized by the DOJ, continued nondiscriminatory operation of these systems must be assured after approval of the Section 271 application.[32]

In sum, Ameritech's failure to provide adequate OSS to TCG demonstrates that it is providing inferior, not parity, interconnection to competitors. Therefore, Ameritech does not meet the Section 271(c)(2)(B)(i) checklist requirements of the Act, and its application must be denied.

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[30]DOJ Evaluation at 21-22.

[31]Id. at 22.

[32]Id. at 30.

IV. CONCLUSION

For the reasons stated herein and its original Comments, the Commission should deny Ameritech's application.

Respectfully submitted,

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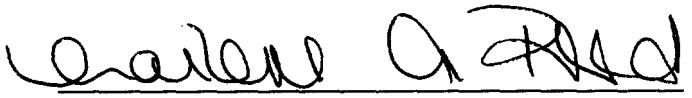
July 7, 1997

CERTIFICATE OF SERVICE

I, Charlene A. Reed, do hereby certify that on this 7th day of July, 1997, I have caused a copy of the foregoing REPLY COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC. to be served via first-class U.S. Mail,* postage-prepaid, upon the persons listed on the attached service list.



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